

**GUTRIDE SAFIER LLP**  
ADAM J. GUTRIDE (State Bar No. 181446)  
SETH A. SAFIER (State Bar No. 197427)  
TODD KENNEDY (State Bar No. 250267)  
KRISTEN G. SIMPLICIO (State Bar No. 263291)  
835 Douglass Street  
San Francisco, California 94114  
Telephone: (415) 271-6469  
Facsimile: (415) 449-6469

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID ELIAS, an individual, on behalf of himself, the general public and those similarly situated

CASE NO. 5:12-cv-00421  
(LHK)

Plaintiff,

**SECOND AMENDED CLASS  
ACTION COMPLAINT**

## HEWLETT-PACKARD COMPANY

## JURY TRIAL DEMANDED

## Defendant

1 David Elias, by and through his counsel, brings this Second Amended Class Action  
2 Complaint against Defendant Hewlett-Packard Company, on behalf of himself and those similarly  
3 situated, for violations of the Consumer Legal Remedies Act, false advertising, unfair trade  
4 practices, breach of express and implied warranty, and fraud, deceit and/or misrepresentation.  
5 The following allegations are based upon information and belief, including the investigation of  
6 Plaintiff's counsel, unless stated otherwise.

## INTRODUCTION

8        1.      Defendant advertised, marketed and sold several series of personal computers with  
9 the option to upgrade the installed components at the time of purchase, including the option to  
10 select more powerful graphics cards. Defendant knew that the upgraded components would not  
11 properly function because the computer's power supply unit was inadequate and also knew that  
12 the manufacturers of the offered upgraded components recommended more power than would be  
13 supplied by the included power supply unit, but Defendant did not inform consumers of either  
14 fact. Instead, Defendant affirmatively misrepresented to the Plaintiff, and similarly situated  
15 customers, that the computers would have ample power to reliably operate all upgraded  
16 components that could be chosen at the time of purchase.

17       2. The use of inadequate power supplies means that the power supply unit will be  
18 running at its maximum capacity for long periods of time, generating substantial heat, putting  
19 undue stress on, and leading to premature failure of, cooling fans and the power supply unit itself.  
20 As a result, Defendant’s computers at issue in this case, including Plaintiff’s, suffered from  
21 problems that would not otherwise occur, including failing to boot, freezing, and randomly  
22 restarting. As explained by Advanced Micro Devices (“AMD”), which supplies a substantial  
23 percentage of the processors incorporated into Defendant’s computers (including the ones  
24 incorporated in the computer Defendant sold to Plaintiff):

25 The power supply is the single most important component in a sys-  
26 tem because it provides the necessary power to allow all other  
hardware to work. A defective or inadequate power supply can  
cause the system to experience:

- System instability: No boot, random reboots or hangs
  - Performance instability: Random application crashes or hangs

- 1           • Display corruption: Dots, lines, flashes on the screen  
2           • Display Abnormality: Additional monitor(s) in a multi monitor  
setup does not work or randomly stops working.

3 <http://support.amd.com/us/kbarticles/Pages/powersupplysysteminstability.aspx>, last visited  
4 October 22, 2012. Plaintiff's computer suffered from all of the listed problems with system and  
5 performance instability, beginning well within the first year of ownership.

6         3. Because of the inadequate power supplies, Defendant's computers at issue in this  
7 litigation, including Plaintiff's, were also much more likely to overheat, short out, melt and catch  
8 fire, creating a significant safety risk. This is because, among other things, an overloaded or  
9 overheated power supply is more likely to send voltage surges through the computer. *See*  
10 [http://askbobrankin.com/replace\\_your\\_power\\_supply.html](http://askbobrankin.com/replace_your_power_supply.html), last visited October 22, 2012.  
11 Plaintiff's computer shorted out and melted approximately 17 months after purchase, although the  
12 result easily could have occurred within the first year of ownership, especially if the computer  
13 had been used more frequently or for longer periods of time.

14         4. These problems would have been avoided had Defendant disclosed that the power  
15 supply unit was insufficient (or less than recommended by manufacturers) to operate the  
16 graphics card and other components that Plaintiff selected from the list of options at the time of  
17 purchase, because in that case Plaintiff would not have made his purchase.

18         5. Defendant obtained substantial profits from the sale of these computers. Its  
19 practices materially deceived customers into believing they were purchasing something more  
20 valuable than what they received. Indeed, while Defendant was marketing enhanced, high  
21 performance, souped up computers and components, the very selection of these enhanced  
22 components, with their additional power needs, actually caused a *decrease* in performance and  
23 efficiency, caused premature failure and created significant safety hazards. To obtain what was  
24 originally expected, Defendant's customers would be required to purchase upgraded power  
25 supply units (which Defendant did not offer) or incur other expensive repairs, or in some cases,  
26 like Plaintiff's, to purchase entirely new computers.

27         6. In the "Slimline" series of computers that Plaintiff purchased, Defendant  
28 aggravated the problem by using a smaller case that (1) left insufficient airspace to dissipate heat

1 and (2) left insufficient room for a standard-size power supply unit and required a lower-wattage  
2 low-profile unit. Yet Defendant affirmatively represented, falsely, that the small case size would  
3 have no adverse effects on the power or other functionality of the computer. Plaintiff, and others  
4 similarly situated, justifiably relied to their detriment on these misrepresentations.

5       7.     Although Defendant had long been aware of these problems, at the time of filing  
6 this lawsuit, it had not changed its business practices and to date it has not compensated affected  
7 customers.

## **PARTIES**

9       8.     David Elias (“Plaintiff”) is, and at all times alleged in this complaint was, an  
10 individual and a resident of Redondo Beach, California.

11       9.      Defendant Hewlett-Packard Company (“Defendant” or “HP”) is a corporation  
12 incorporated under the laws of the State of Delaware, having its principal place of business in  
13 Palo Alto, California.

## **JURISDICTION AND VENUE**

15       10. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business  
16 and Professions Code, section 17200, *et seq.* Plaintiff and Defendant are “persons” within the  
17 meaning of the California Business and Professions Code, section 17201.

18        11. The injuries, damages and/or harm upon which this action is based, occurred or  
19 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State  
20 of California.

21        12. Defendant has engaged, and continue to engage, in substantial and continuous  
22 business practices in the State of California, including in the City of Palo Alto and County of  
23 Santa Clara.

24       13. In accordance with California Civil Code Section 1780(d), Plaintiff previously  
25 filed a declaration establishing that, in 2010, Plaintiff purchased at least one product from  
26 Hewlett-Packard Company, which has its headquarters in Palo Alto, California, in the County of  
27 Santa Clara.

28 14. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

## **SUBSTANTIVE ALLEGATIONS**

2       15. HP is one of the world's largest manufacturers and vendors of personal computers  
3 and related computing products. Among these products is a line of customizable desktop  
4 computers known as the HP Pavilion Slimline series ("Slimline"), and another line of  
5 customizable desktop computers known as the HP Pavilion series ("Pavilion"). (For purposes of  
6 this complaint, the unmodified word "Pavilion" excludes the "Pavilion HPE" series.) Defendant  
7 has manufactured over 250 customizable models within the Slimline series, and hundreds more in  
8 the Pavilion series, and it continues to sell customizable models within both series.

9        16.      Defendant allowed, and continues to allow, class members to customize its  
10 Pavilion and Slimline computers with faster, more powerful, upgraded components. For  
11 example, prior to the filing of this lawsuit, class members were given the option to customize the  
12 central processor, RAM memory, graphics card, primary optical drive, networking options, ports,  
13 sound card, speakers, and/or DVD/CD burner. Defendant's Pavilion and Slimline computers  
14 came with predetermined set of hardware and software components and peripherals—i.e., a “base  
15 configuration.” Defendant then advertised an upgraded or “recommended configuration,” thereby  
16 specifically marketing and advertising computers with faster, higher performance, more powerful  
17 and/or upgraded components. For most of the different computer components, Defendant further  
18 marketed and advertised a menu of various customizable options, typically ranging from more  
19 basic to more powerful, higher performance components. The customizable components  
20 marketed and advertised by Defendant mostly included OEM products manufactured by third  
21 parties, who supplied the products to Defendant, who in turn, used them to build the computers to  
22 the class member’s specifications. Among these OEM products are central processors, memory,  
23 hard disk drives, and graphics cards of different sizes, speeds and power requirements.

24        17. Defendant sold all of its Pavilion and Slimline computers with an included  
25 power supply unit. For example, at the time of initiating this lawsuit, the Slimline computers  
26 were sold with an included 220-watt power supply unit. Previous Slimline models were sold with  
27 the same or lower-wattage power supply units, including some with as low as 100-watt power  
28 supply units. Most computers in the Pavilion series were sold with a 300-watt power supply unit.

1       18. With some of its series of computers, such as the Pavilion HPE Series, Defendant  
 2 advertised and marketed to customers a choice of power supplies based on the power needs of the  
 3 peripherals (such as graphics cards) that they select. These choices were not offered to  
 4 purchasers of the Slimline and Pavilion series, who were simply told in the marketing materials  
 5 that the computers included a power supply unit of a particular size, e.g., 220 watts. As will be  
 6 further explained below, class members were thus led to believe that the included power supply  
 7 was sufficient to operate the computers, as configured.

8       19. Many of the upgraded, customizable hardware and software components and  
 9 peripherals that are sold to class members as part of the Slimline and Pavilion computers actually  
 10 require more watts than are provided by the included power supply unit. Even if the components  
 11 can be operated for some period of time with the wattage provided by the included power supply  
 12 unit, their use will inherently overtax the power supply unit and will be substantially certain to  
 13 result in the malfunctions described in this complaint, even when the computers are operated  
 14 under normal conditions, and well within the first year of operation. If, for example, the customer  
 15 chooses one of the upgraded graphics cards (as did Plaintiff) and then uses the computer to run  
 16 graphics-rich programs for which the card is designed (as did Plaintiff), the inadequate power  
 17 supply is likely to cause the computer to randomly freeze, restart or shut down (as did Plaintiffs).  
 18 The likelihood of such malfunctions will increase if the computer is being used for multitasking,  
 19 so that multiple components (for example, the graphics card and DVD drive) are being used  
 20 simultaneously. For this reason, the manufacturers of the components recommend much larger  
 21 power supply units than Defendant supplied, although Defendant neglected to so inform  
 22 consumers.

23       20. For example, Defendant marketed and advertised its HP Slimline s5t series with  
 24 the graphics cards shown in left column of the table below. As noted above, the Slimline  
 25 computers are marketed and advertised with a 220-watt power supply. On the right are the  
 26 recommendations by the manufacturers of those cards (OEMs) for minimum power supply:

<b>Graphics Card Option</b>	<b>Manufacturer Recommended Power Supply</b>

1	Integrated graphics - Intel(R) HD graphics [DVI, VGA]	Presently unknown to Plaintiff
2	512MB DDR3 AMD Radeon HD 6450 [DVI, HDMI, VGA adapter]	400W
3	1GB DDR3 NVIDIA GeForce GT520 [DVI, HDMI, VGA adapter]	300W
4	1GB DDR3 AMD Radeon HD 6450 [DVI, HDMI, VGA adapter]	400W

9 As another example, Defendant marketed and advertised its HP Pavilion p7z series with the  
 10 graphics cards shown in left column of the table below. As noted, this series of Pavilion  
 11 computers was marketed and advertised with a 300-watt power supply. On the right are the  
 12 recommendations by the manufacturers of those cards (OEMs) for minimum power supply:

13	<b>Graphics Card Option</b>	<b>Manufacturer Recommended</b>
14		<b>Power Supply</b>
15	Integrated graphics - Intel(R) HD graphics [DVI, VGA]	Presently unknown to Plaintiff
16	512MB DDR3 AMD Radeon HD 6450 [DVI, HDMI, VGA adapter]	400W
17	1GB DDR3 NVIDIA GeForce GT520 [DVI, HDMI, VGA adapter]	300W
18	1GB DDR3 AMD Radeon HD 6450 [DVI, HDMI, VGA adapter]	400W
19	1GB DDR3 AMD Radeon HD 6570 [DVI, HDMI, VGA adapter]	400W
20	2GB DDR3 NVIDIA GeForce GT530 [DVI, HDMI, VGA adapter]	300W

21 Defendant intentionally failed to disclose that the Slimline and Pavilion computers, as configured,  
 22 are underpowered. Nor did Defendant disclose the minimum manufacturer-recommended power  
 23

1 supply for the advertised graphics cards and other components or peripherals.

2       21. Defendant compounded the deception by permitting customers to configure and  
 3 purchase the Slimline or Pavilion computers, directly from Defendant through its website, with  
 4 components that exceeded the capacity of the power supplies. Defendant knew how to avoid this  
 5 deception because in other computer models—e.g., the HPE series—if customers attempted to  
 6 configure the computers with components or peripherals that require more power than the standard  
 7 power supply, they were provided the error message: “**Selection caused conflict.** This Power  
 8 Supply cannot be configured with this Graphic. Please select higher wattage of PSU. Update  
 9 Graphics card or [Power Supply](#).” The words “Power Supply” were a link to choose a larger  
 10 power supply. No such message was provided to consumers in the purchase of the Slimline or  
 11 Pavilion units.

12       22. Furthermore, when customers, including the Plaintiff, were in the process of  
 13 purchasing computers with faster, higher performance, more powerful and/or upgraded  
 14 components, Defendant affirmatively marketed and advertised that its Slimline and Pavilion  
 15 computers would have sufficient power to operate the touted optional customizable components.  
 16 HP’s website stated that the Pavilion computers provide were for “Everyday computing. **Ultra-**  
 17 **reliable performance** delivered in a classic desktop PC. **Packed with everything you need for**  
 18 **the internet, email, entertainment** and more.”

19 [http://www.shopping.hp.com/desktops?jumpid=re\\_r602\\_ec\\_artgen\\_body\\_psg\\_jul2010\\_desktops](http://www.shopping.hp.com/desktops?jumpid=re_r602_ec_artgen_body_psg_jul2010_desktops),  
 20 last visited Dec. 7, 2011. (emphasis added). It also described the Slimline computers as “Slim  
 21 and sleek: Slim, sleek, space-saving PCs **deliver full power and performance** without a  
 22 towering presence.” *Id.* Only after viewing these screens was the consumer (including Plaintiff)  
 23 able to choose the customization options. No warning was given that, if optional higher  
 24 performance components are selected, the computers would no longer have “ultra-reliable  
 25 performance” or “full power” to run those components. Nor was any warning given that selecting  
 26 the optional, higher performance components would necessarily (1) decrease the computer’s  
 27 performance, efficiency, life-span and (2) increase its safety hazards. Prior to purchasing his  
 28 computer, Plaintiff reviewed, and relied to his detriment, on each of the above

misrepresentations and omissions regarding the Slimline series.

23. In addition, when consumers (including Plaintiff) used the “Help me choose” interface on the HP website, they were told that the Slimline and Pavilion computers would meet their “computing needs” even after stating that those “computing needs” included “Multitasking basic and everyday activities plus using several applications at the same time, **working with complex graphics and multimedia**” and that the computer was intended for “Business/Home office: you need to manage appointments, spreadsheets, **graphics-rich presentations**, and financial applications. **A versatile, reliable system with ample power so you can multitask and communicate with others is critical.**” See

[http://www.shopping.hp.com/webapp/shopping/product\\_advisor.do?landing=desktops&storeName=computer\\_store&jumpid=in\\_R329\\_prodexp/hhoslp/psg/desktops/leftnav\\_help\\_me\\_choose](http://www.shopping.hp.com/webapp/shopping/product_advisor.do?landing=desktops&storeName=computer_store&jumpid=in_R329_prodexp/hhoslp/psg/desktops/leftnav_help_me_choose), last visited Dec. 7, 2011. (emphasis added). Once again, no warning was given that, if optional higher performance components were selected, the computers would no longer be usable for graphics-rich presentations, or be reliable with ample power. To the contrary, when the optional higher performance components were selected, the computer was less. Plaintiff reviewed, and relied to his detriment, on each of the above misrepresentations and omissions.

24. Further, on HP's product page advertising each of the Slimline series (the s5t, s5xt and s5z ), and the availability of the upgraded, high performance components, Defendant made the following statements:

**Packing power** and style into your tightest spaces, this elegant design **is ideal for family entertainment**, productivity, homework, photos, **and games**.

\*

**Compact but powerful.** Don't let the size fool you—this series delivers the power you need, easily handling multimedia and rich graphics.

\* \* \*

Enjoy high-def videos, quality sound, and more, with . . .[optional dedicated graphics card for pumping up images and multimedia...]

([http://www.shopping.hp.com/webapp/shopping/computer\\_can\\_series.do?storeName=computer\\_](http://www.shopping.hp.com/webapp/shopping/computer_can_series.do?storeName=computer_store&category=desktops&a1=See+all&v1=series&a2=Category&v2=Slim+and+sleek&series_n)

ame=s5t\_series&jumpid=in\_R329\_prodexp/hhoslp/psg/desktops/All\_desktop\_series/s5t\_series, last accessed December 5, 2011.) (emphasis added.) Likewise, on the Pavilion p7z series product advertising page, Defendant said: “Do more, achieve more, and play more with our Pavilion p7z series. **It’s packed with power and options**—fast processors, **amazing graphics**, loads of storage—plus an all-new look.” ([http://www.shopping.hp.com/webapp/shopping/computer\\_can\\_series.do?storeName=computer\\_store&category=desktops&a1=Category&v1=Everyday+computing&series\\_name=p7z\\_series&jumpid=in\\_R329\\_prodexp/hhoslp/psg/desktops/Everyday\\_computing/p7z\\_series](http://www.shopping.hp.com/webapp/shopping/computer_can_series.do?storeName=computer_store&category=desktops&a1=Category&v1=Everyday+computing&series_name=p7z_series&jumpid=in_R329_prodexp/hhoslp/psg/desktops/Everyday_computing/p7z_series), last visited Dec. 7, 2011.) (emphasis added.) Nowhere with regard to the advertising and marketing of the Slimline or Pavilion computers did HP disclose that additional, or upgraded, power supply units may be needed for proper operation. Nor did HP disclose that a computer with upgraded, high performance components would necessarily not last as long or operate as well due to an undisclosed lack of power. Plaintiff reviewed, and relied to his detriment on, each of the above misrepresentations and omissions regarding the Slimline computers.

25. Defendant also affirmatively misstated that despite the small physical size of the Slimline computers, they would not suffer from any reliability or power problems. For example, as stated above, Defendant stated that the Slimline computers were “Compact but powerful. Don’t let the size fool you—this series delivers the power you need, easily handling multimedia and rich graphics.” These statements were false and misleading because the small physical size means there is inadequate space for either a standard-sized power supply unit or for sufficient air to flow between components. These two inadequacies are mutually reinforcing, leading to high temperatures and added stress on the power supply unit, fans, central processor, and components. The inadequacies are even more pronounced when customers select upgraded components such as graphics cards that require additional power and generate additional heat. In fact, the Slimline computers at issue could not “easily handle multimedia and rich graphics.” To the contrary, the Slimline computers were less reliable and had shorter life spans and higher safety risks. Plaintiff reviewed, and relied to his detriment on, each of the above misrepresentations and omissions.

26. Plaintiff customized, and upgraded, his computer’s components on the HP website

1 and purchased his computer directly from HP. No other retailer was involved.

2       27. Because Plaintiff's computer had an inadequate power supply to operate the  
 3 upgraded components, his computer underperformed, froze, overheated, and eventually caused  
 4 permanent damage to the central processing unit and a complete loss of his computer. The  
 5 problems of random freezing, restarting and shutting down all began to manifest well within the  
 6 first year of operation. Had Defendant not misrepresented the features of the computer, or had it  
 7 disclosed that the power supply had a lower capacity than recommended by the manufacturers of  
 8 the components, Plaintiff would not have made his purchase.

9       28. HP is well aware of the need for an adequate power supply. HP even includes a  
 10 page on its website entitled "Troubleshooting Power Supply Issues" which explains how to  
 11 determine the correct size power supply for upgrade or replacement. There, HP states, "When  
 12 adding or upgrading system components, such as memory, optical drives, or video cards, make  
 13 sure that the power supply you purchase has a wattage rating equal or higher than the total  
 14 combined wattage of all internal PC components."

15 ([http://h10025.www1.hp.com/ewfrf/wc/document?docname=bph06788&t...n\\_us/bph06788/loc:3&cc=us&dlc=en&lang=en&lc=en&product=3245532](http://h10025.www1.hp.com/ewfrf/wc/document?docname=bph06788&t...n_us/bph06788/loc:3&cc=us&dlc=en&lang=en&lc=en&product=3245532), last visited Dec. 7, 2011.) HP did not  
 16 follow its own advice, however, in allowing customers like Plaintiff to initially configure the  
 17 computers with components whose total combined wattage far exceeded the wattage rating of the  
 18 power supply, while failing to disclose the wattage recommendations made by the component  
 19 manufacturers.

21       29. Plaintiff's experience was not isolated. Many other customers have complained to  
 22 HP about the issue. For example, HP hosts an online form containing a page where a Slimline  
 23 purchaser complains about not being able to play a new game on the computer. An HP-qualified  
 24 "expert," who apparently is another HP customer who has made more than 12000 posts in the  
 25 forum, responds that "Slimline PCs are not meant to be gaming PCs. The power supplies are too  
 26 small and the cabinets are too small to expel the heat that big gaming video cards generate."  
 27 (<http://h30434.www3.hp.com/t5/Desktop-Gaming/hp-pavillion-slimline-s5780-system-graphics-card-query/td-p/1052685>, last visited Dec. 7, 2011. This statement is flatly inconsistent with

1 Defendant's advertising and marketing, as described above.

## 2 PLAINTIFF'S EXPERIENCES

3 30. On or about June 10, 2010, Defendant marketed and advertised, and Plaintiff  
4 purchased, an HP Pavilion Slimline s5305z computer through the HP website. Using HP's  
5 website interface, Plaintiff selected to include in his computer the following components,  
6 including a more powerful, faster, upgraded graphics card:

7 Processor	AMD Athlon II 215 dual core processor (2.7 GHz, 1MB L2, up to 4000 MHz bus),
8 Memory	2GB DDR3-1066MHz SDRAM (1DMM)
9 Hard drive	320 GB 7200 rpm SATA 3Gb/s hard drive
10 Graphics Card	512 MB ATI Radeon HD 4350 (DVI,HDMI,VGA)
Optical Drive	LightScribe 16x max. DVD+R/RW SuperMulti drive
Networking	Wireless LAN card

11 31. Plaintiff's computer was marketed and advertised as equipped with a 220-watt  
12 power supply. Plaintiff was not given the option of upgrading his computer's 220-watt power  
13 supply unit. Plaintiff paid Defendant \$499.94 for his computer, as configured.

14 32. Plaintiff read and relied upon each of the affirmative misrepresentations and  
15 omissions detailed above at the time he selected the Slimline series, selected his model s5305z,  
16 chose the components (including the graphics card) and paid for the computer, all of which he did  
17 directly through the HP website. At no time did Defendant inform Plaintiff that the computer, as  
18 advertised and configured, would not properly function with a 220-watt power supply. Nor did  
19 HP inform him that by choosing (and paying for) upgraded, higher performance components he  
20 would necessarily (1) decrease the computer's performance, efficiency, life-span and (2) increase  
21 its safety hazards, including the risk of it catching, or starting a, fire. Indeed, Defendant even  
22 failed to inform Plaintiff that AMD, the manufacturer of the graphics card that Defendant offered  
23 and that he selected—the 512 MB ATI Radeon HD 4350—expressly recommended at least a  
24 “300 Watt or greater power supply (350 Watt for ATI CrossFire™ technology in dual mode).”  
25 To the contrary, by virtue of the fact that Defendant marketed and advertised, and he was able to  
26 select the above components and peripherals, Plaintiff was deceptively led by Defendant to  
27 believe that those components and peripherals would be fully functional with his computer, as  
28 configured with the included power supply, and that the computer as configured satisfied all

1 OEM recommendations.

2       33. In the months following the computer purchase, and well before the end of the first  
 3 year of ownership, Plaintiff's computer began to randomly freeze, restart or shut down. At the  
 4 time, Plaintiff did not know what was causing the problems. In November 2011, the computer  
 5 ceased working entirely and could not be restarted. Plaintiff brought the computer in for repairs  
 6 and learned that the power supply was defunct and that the motherboard had shorted out. He  
 7 subsequently learned that the wattage rating of the included power supply was well below what  
 8 was needed or recommended to run the computer configuration that he had selected through the  
 9 HP website at the time of purchase, and that the inadequacy of the power supply unit had caused  
 10 his problems. Plaintiff contacted Defendant for assistance, but it would not replace the computer  
 11 or even agree to repair it.

#### CLASS ALLEGATIONS

13       34. Plaintiff brings this action against Defendant on behalf of himself and all others  
 14 similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure  
 15 and section 1781 of the California Civil Code. Plaintiff seeks to represent a group of similarly  
 16 situated persons. The group is defined as follows:

17           All persons who, between December 7, 2007 and the present, purchased, in  
 18 the United States, a computer, directly from Defendant, with an included  
 19 power supply unit having a rated capacity lower than (1) the total combined  
                  wattage of all internal PC components and peripherals or (2) the capacity rec-  
                  ommended by the manufacturer of any included component or peripheral.

20       35. This action has been brought and may properly be maintained as a class action  
 21 against Defendant pursuant to the provisions of Rule 23 because there is a well-defined  
 22 community of interest in the litigation and the proposed class is easily ascertainable.

23       36. Numerosity: Plaintiff does not know the exact size of the class, but it is estimated  
 24 that it is composed of more than 100 persons. The persons in the class are so numerous that the  
 25 joinder of all such persons is impracticable and the disposition of their claims in a class action  
 26 rather than in individual actions will benefit the parties and the courts.

27       37. Common Questions Predominate: This action involves common questions of law  
 28 and fact to the potential class because each class member's claim derives from the deceptive,

1 unlawful and/or unfair statements and omissions that led Defendant's customers to believe that its  
2 Slimline and Pavilion computers were sufficiently powerly to be safely operated, that all included  
3 components and peripherals would be adequately powered, and that Defendant's Slimline and  
4 Pavilion computers were sold consistent with the power supply recommendations of the  
5 manufactuers of the all included components and peripherals. The common questions of law and  
6 fact predominate over individual questions, as proof of a common or single set of facts will  
7 establish the right of each member of the Class to recover. Among the questions of law and fact  
8 common to the class are:

- 9           a) Whether Defendant unfairly, unlawfully and/or deceptively failed to inform  
10 class members that additional power would be necessary to properly operate the Slimline and  
11 Pavilion computers, as configured;
- 12           b) Whether Defendant misled class members by representing that it was selling  
13 Slimline and Pavilion computers containing adequate power to fully operate all of the advertised  
14 features, when in fact, the power was inadequate;
- 15           c) Whether the advertised components included with Defendant's Slimline and  
16 Pavilion computers required a greater power supply to function properly than was installed;
- 17           d) Whether the manufacturers of the components and peripherals advertised  
18 and included with Defendant's Slimline and Pavilion computers recommended a greater power  
19 supply than was originally shipped with Defendant's computers;
- 20           e) Whether Defendant's advertising and marketing regarding the Slimline and  
21 Pavilion computers sold to class members was likely to deceive class members or was unfair;
- 22           f) Whether Defendant engaged in the alleged conduct knowingly, recklessly,  
23 or negligently;
- 24           g) Whether the Slimline and Pavilion computers manufactured and sold by  
25 Defendants were defective;
- 26           h) Whether the defect in the Slimline and Pavilion computers was inherent and  
27 substantially certain to result in malfunction within one year of purchase;
- 28           i) Whether the Slimline and Pavilion computers were unfit for their ordinary

1 purpose at the time of sale;

2                   j) Whether by selling the Slimline and Pavilion computers Defendants  
3 breached the express warranty or implied warranty of merchantability;

4                   k) The amount of revenues and profits Defendant received and/or the amount  
5 of monies or other obligations lost by class members as a result of such wrongdoing;

6                   l) Whether class members are entitled to injunctive and other equitable relief  
7 and, if so, what is the nature of such relief; and

8                   m) Whether class members are entitled to payment of actual, incidental,  
9 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the  
10 nature of such relief.

11                 38. Typicality: Plaintiff's claims are typical of the class because Plaintiff purchased  
12 from Defendant a computer containing components that were recommended, by their  
13 manufacturers, to only be installed in machines with a more robust power supply than what was  
14 provided by Defendant. Thus, Plaintiff and class members sustained the same injuries and  
15 damages arising out of Defendant's conduct in violation of the law. The injuries and damages of  
16 each class member were caused directly by Defendant's wrongful conduct in violation of law as  
17 alleged.

18                 39. Adequacy: Plaintiff will fairly and adequately protect the interests of all class  
19 members because it is in his best interests to prosecute the claims alleged herein to obtain full  
20 compensation due to him for the unfair and illegal conduct of which he complains. Plaintiff also  
21 has no interests that are in conflict with or antagonistic to the interests of class members. Plaintiff  
22 has retained highly competent and experienced class action attorneys to represent his interests and  
23 that of the class. By prevailing on his own claim, Plaintiff will establish Defendant's liability to  
24 all class members. Plaintiff and his counsel have the necessary financial resources to adequately  
25 and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary  
26 responsibilities to the class members and are determined to diligently discharge those duties by  
27 vigorously seeking the maximum possible recovery for class members.

28                 40. Superiority: There is no plain, speedy, or adequate remedy other than by

1 maintenance of this class action. The prosecution of individual remedies by members of the class  
 2 will tend to establish inconsistent standards of conduct for the Defendant and result in the  
 3 impairment of class members' rights and the disposition of their interests through actions to  
 4 which they were not parties. Class action treatment will permit a large number of similarly  
 5 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,  
 6 and without the unnecessary duplication of effort and expense that numerous individual actions  
 7 would engender. Furthermore, as the damages suffered by each individual member of the class  
 8 may be relatively small, the expenses and burden of individual litigation would make it difficult  
 9 or impossible for individual members of the class to redress the wrongs done to them, while an  
 10 important public interest will be served by addressing the matter as a class action.

11       41.     Nexus to California. The State of California has a special interest in regulating the  
 12 affairs of corporations that do business here. Defendant has its principal place of business in  
 13 California, and the acts complained of herein emanated from decisions made by Defendant in  
 14 California. Accordingly, there is a substantial nexus between Defendant's unlawful behavior and  
 15 California such that the California courts should take cognizance of this action on behalf of a  
 16 class of individuals who reside anywhere in the United States.

17       42.     Plaintiff is unaware of any difficulties that are likely to be encountered in the  
 18 management of this action that would preclude its maintenance as a class action.

### **CAUSES OF ACTION**

#### **PLAINTIFF'S FIRST CAUSE OF ACTION**

20       **(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)**  
 21       **On Behalf of Himself and the Class**

22       43.     Plaintiff realleges and incorporates the paragraphs of this complaint as if set forth  
 23 herein.

24       44.     This cause of action is brought pursuant to the California Consumers Legal  
 25 Remedies Act, California Civil Code § 1750, *et seq.* ("CLRA").

26       45.     Defendant's actions, representations and conduct have violated, and continue to  
 27 violate the CLRA, because they extend to transactions that are intended to result, or which have  
 28 resulted, in the sale or lease of goods or services to consumers.

1       46. Plaintiff and other class members are “consumers” as that term is defined by the  
2 CLRA in California Civil Code § 1761(d).

3       47. The computers, including the customized, upgraded, high performance  
4 components, that Plaintiff (and others similarly situated class members) purchased from  
5 Defendant were “goods” within the meaning of California Civil Code § 1761(a).

6       48. By engaging in the actions, representations and conduct set forth in this complaint,  
7 Defendant has violated, and continues to violate, § 1770(a)(2), § 1770(a)(3), § 1770(a)(5), and  
8 § 1770(a)(7) of the CLRA. In violation of California Civil Code §1770(a)(2), Defendant’s acts  
9 and practices constitute improper representations regarding the source, sponsorship, approval, or  
10 certification of the goods it sold. In violation of California Civil Code §1770(a)(3), Defendant’s  
11 acts and practices constitute improper representations regarding the affiliation, connection, or  
12 association with, or certification by, another of the goods it sold. In violation of California Civil  
13 Code §1770(a)(5), Defendant’s acts and practices constitute improper representations that the  
14 goods it sells have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities,  
15 which they do not have. In violation of California Civil Code §1770(a)(7), Defendant’s acts and  
16 practices constitute improper representations that the goods it sells are of a particular standard,  
17 quality, or grade, when they are of another.

18       49. Specifically, Defendant’s acts and practices led customers to believe that they  
19 would be provided with computers with adequate power supplies to assure proper performance,  
20 including sufficient power to operate all of the included components that were advertised and  
21 marketed by Defendant, consistent with the recommendations of the component manufacturers.  
22 Defendant thereby misrepresented (by commission and omission) that the computers, including  
23 the components, as sponsored, approved or certified by the manufacturers of the included  
24 components when they were not. Defendant also represented that the computers, including the  
25 components, would be upgraded, powerful, performance, more efficient, enhanced, powered,  
26 faster, high performance, full powered, amply powered, compact but powerful, and packed with  
27 power, when they were not. Nor did Defendant’s computers provide reliable or ultra-reliable  
28 performance, deliver full power and performance or deliver the power needed, as it represented.

1 Each of these statements represented or suggested that the upgraded performance components,  
2 were beneficial to the computer's operation, when, due to the limited power supply, they, in fact,  
3 were not. Defendant failed to inform Plaintiff that to operate the upgraded graphics card without  
4 risk of damaging the computer, Plaintiff would have to purchase and install a higher-rated power  
5 supply unit; that Defendant did not offer such a unit; and that because of the small size of the  
6 computer case, it might not be possible to purchase a higher-rated unit that would fit into the case.  
7 Defendant also failed to inform Plaintiff that the computer was likely to experience system  
8 instability and performance instability due to the inadequate power supply. Plaintiff reviewed,  
9 and relied to his detriment, on all of the above misrepresentations and omissions.

10       50. Plaintiff requests that this Court enjoin Defendant from continuing to employ the  
11 unlawful methods, acts and practices alleged herein pursuant to California Civil Code  
12 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the  
13 future, Plaintiff and the other members of the Class will continue to suffer harm.

14       51. More than thirty days prior to the filing of this Second Amended Complaint,  
15 Plaintiff gave notice and demand that Defendant correct, repair, replace or otherwise rectify the  
16 unlawful, unfair, false and/or deceptive practices complained of herein. Defendant failed to do  
17 so. Among other things, it failed to identify similarly situated customers; notify them of their  
18 right to correction, repair, replacement or other remedy; and provide that remedy. Accordingly,  
19 Plaintiff seeks, pursuant to California Civil Code § 1780(a)(3), on behalf of himself and those  
20 similarly situated class members, compensatory damages, punitive damages and restitution of any  
21 ill-gotten gains due to Defendant's acts and practices.

22       52. Plaintiff also requests that this Court award him his costs and reasonable attorneys'  
23 fees pursuant to California Civil Code § 1780(d).

**PLAINTIFF'S SECOND CAUSE OF ACTION**  
**(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))**  
**On Behalf Of Himself and the Class**

53. Plaintiff realleges and incorporates by reference the paragraphs of this complaint  
as if set forth herein.

28           54. Beginning at an exact date unknown to Plaintiff, but within three (3) years

1 preceding the filing of this lawsuit, Defendant made untrue, false, deceptive and/or misleading  
2 statements in connection with the advertising and marketing of computers, including upgraded,  
3 high performance components.

4       55.     Defendant intentionally made the misrepresentations and statements (by omission  
5 and commission) described above, that led reasonable customers, including Plaintiff, to believe  
6 that they were purchasing a computer with upgraded, high performance components, with an  
7 included power supply that was capable of fully operating all installed components and  
8 peripherals.

9       56.     Plaintiff and those similarly situated relied to their detriment on Defendant's false,  
10 misleading and deceptive advertising and marketing practices. Had Plaintiff and those similarly  
11 situated been adequately informed and not intentionally deceived by Defendant, they would have  
12 acted differently by, without limitation, refraining from purchasing certain components,  
13 purchasing additional power, or refraining from purchasing Defendant's Slimline computers.

14       57.     Defendant's acts and omissions are likely to deceive the general public.

15       58.     Defendant engaged in these false, misleading and deceptive advertising and  
16 marketing practices to increase its profits. Accordingly, Defendant engaged in false advertising,  
17 as defined and prohibited by section 17500, et seq. of the California Business and Professions  
18 Code.

19       59.     The aforementioned practices, which Defendant has used, and continues to use, to  
20 its significant financial gain, also constitute unlawful competition and provide an unlawful  
21 advantage over Defendant's competitors as well as injury to the general public.

22       60.     Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as  
23 necessary and according to proof, to restore any and all monies acquired by Defendant from  
24 Plaintiff, the general public, or those similarly situated by means of the false, misleading and  
25 deceptive advertising and marketing practices complained of herein, plus interest thereon.

26       61.     Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit  
27 Defendant from continuing to engage in the false, misleading and deceptive advertising and  
28 marketing practices complained of herein. The acts complained of herein occurred, at least in

part, within three (3) years preceding the filing of this lawsuit.

2       62. Plaintiff and those similarly situated are further entitled to and do seek both a  
3 declaration that the above-described practices constitute false, misleading and deceptive  
4 advertising, and injunctive relief restraining Defendant from engaging in any such advertising and  
5 marketing practices in the future. Such misconduct by Defendant, unless and until enjoined and  
6 restrained by order of this Court, will continue to cause injury in fact to the general public and the  
7 loss of money and property in that the Defendant will continue to violate the laws of California,  
8 unless specifically ordered to comply with the same. This expectation of future violations will  
9 require current and future customers to repeatedly and continuously seek legal redress in order to  
10 recover monies paid to Defendant to which Defendant is not entitled. Plaintiff, those similarly  
11 situated and/or other consumers nationwide have no other adequate remedy at law to ensure  
12 future compliance with the California Business and Professions Code alleged to have been  
13 violated herein.

14       63. As a direct and proximate result of such actions, Plaintiff and the other members of  
15 the Class have suffered, and continue to suffer, injury in fact and have lost money and/or property  
16 as a result of such false, deceptive and misleading advertising in an amount which will be proven  
17 at trial, but which is in excess of the jurisdictional minimum of this Court.

**PLAINTIFF'S THIRD CAUSE OF ACTION**  
**(Fraud, Deceit and/or Misrepresentation)**  
**On Behalf of Himself and The Class**

20           64. Plaintiff realleges and incorporates by reference the paragraphs of this complaint  
21 as if set forth herein.

22       65. On or about June 10, 2010, Defendant fraudulently and deceptively failed to  
23 inform Plaintiff that the HP computer he was purchasing from HP did not include an adequate  
24 power supply to properly operate the computer, including the upgraded graphics card that he had  
25 selected from Defendant's list of compatible upgrades and that HP then installed in the computer  
26 prior to shipping it to him. Defendant also fraudulently and deceptively failed to inform him that  
27 to operate the upgraded graphics card without risk of damaging the computer, Plaintiff would  
28 have to purchase and install a higher-rated power supply unit. Defendant also fraudulently and

1 deceptively failed to inform him that Defendant did not offer such a unit, and that because of the  
2 small size of the computer case, it might not be possible to purchase a higher-rated unit that  
3 would fit into the case. Defendant also fraudulently and deceptively failed to inform him that  
4 AMD, the manufacturer of the graphics card selected by him, recommended a higher power  
5 supply than was included in Plaintiff's computer. Defendant fraudulently and deceptively failed  
6 to inform Plaintiff that because the HP computer he was purchasing did not include adequate  
7 power supply to properly operate the computer, including the upgraded graphics card, which he  
8 had selected from Defendant's list of compatible upgrades, the computer would necessarily be  
9 less efficient, less powerful, under or poorly perform, have a shortened life expectancy and  
10 increase the safety risks due to overheating and potentially internal fires.

11       66.     These omissions were known exclusively to, and actively concealed by,  
12 Defendant, not reasonably known to Plaintiff, and material at the time they were made. They  
13 concerned material facts that were essential to the analysis undertaken by Plaintiff as to whether  
14 to purchase his computer, as configured.

15       67.     In not so informing Plaintiff, Defendant breached its duty to him. Defendant also  
16 gained financially from, and as a result of, its breach.

17       68.     Plaintiff and those similarly situated relied to their detriment on Defendant's  
18 fraudulent omissions. Had Plaintiff and those similarly situated been adequately informed and  
19 not intentionally deceived by Defendant, they would have acted differently by, without limitation,  
20 purchasing different computers and/or components.

21       69.     Defendant had a duty to inform class members at the time of the computer  
22 purchases of the inadequate power supply units in the computers that they were purchasing.  
23 Defendant also had a duty inform class members that the manufacturers of the components and  
24 peripherals included with its computers, individually and in the aggregate, recommended a higher  
25 power supply than was included with its computers. Defendant omitted to provide this  
26 information to class members. Class members relied to their detriment on Defendant's omissions.  
27 These omissions were material to the decisions of the class members to purchase the computers.  
28 In making these omissions, Defendant breached its duty to class members. Defendant also gained

financially from, and as a result of, its breach.

70. By and through such fraud, deceit, misrepresentations and/or omissions, Defendant intended to induce Plaintiff and those similarly situated to alter their position to their detriment. Specifically, Defendant fraudulently and deceptively induced Plaintiff and those similarly situated to, without limitation, to purchase certain computers and components.

71. Plaintiff and those similarly situated justifiably and reasonably relied on Defendant's omissions, and, accordingly, were damaged by the Defendant.

72. As a direct and proximate result of Defendant's misrepresentations, Plaintiff and those similarly situated have suffered damages, including, without limitation, the amount they paid for the Slimlines computers and components.

73. Defendant's conduct as described herein was willful and malicious and was designed to maximize Defendant's profits even though Defendant knew that it would cause loss and harm to Plaintiff and those similarly situated.

**PLAINTIFF'S FOURTH CAUSE OF ACTION**  
**(Breach of Express Warranty)**  
**On Behalf of Himself and the Class**

74. Plaintiff realleges and incorporates by reference the paragraphs of this complaint as if set forth herein.

75. This cause of action is brought pursuant to California Commerical Code § 2100, et seq. as well as the common law.

76. Plaintiff, and those similarly situated, were “buyers” of goods as defined in California Commerical Code § 2103.

77. Defendants were “sellers” and “merchants” as those terms are defined in California Commerical Code §§ 2103 and 2104.

78. Defendants' written product warranties state, in pertinent part, in similar or identical terms, as follows:

HP warrants that the HP Hardware Products that you have purchased or leased from HP are free from defects in materials or workmanship under normal use during the Limited Warranty Period [of one year].

79. Plaintiff, and those similarly situated, who purchased HP Slimline computers

1 received materially similar, if not identical, written warranties from Defendants.

2       80.     These representations became part of the basis of the bargain in the purchases by  
3 Plaintiff, and those similarly situated, of Defendants' products, and thus qualify as "express  
4 warranties" as defined by section 2313 of the California Commercial Code in connection with the  
5 sale of goods to Plaintiff and those similarly situated.

6       81.     By selling computers with insufficient power supplies, Defendants breached this  
7 written warranty in that the computers were not free from defects in materials or workmanship  
8 under normal use for the warranty period. To the contrary, Defendants' computers, given their  
9 inadequate power supplies, could not and would not function properly under normal use, within  
10 the first year of operation. Rather, they would (and in Plaintiff's case, did) randomly freeze,  
11 restart, and shut down during that period. In normal operation, they were also substantially more  
12 likely to (and in Plaintiff's case, approximately 17 months after purchase, did) overheat, result in  
13 total failure of the power supply unit, and cause shorting out and melting of the central processing  
14 unit, rendering it inoperable. Finally, because of voltage fluctuations caused by the inadequate  
15 power supply, the computers were substantially more likely catch fire, creating a significant  
16 safety hazard.

17       82.     None of these malfunctions, including the random freezing, restarting and shutting  
18 down, are symptoms of a normally functioning computer. Rather, they are symptoms of the  
19 inherent defect: failing to include adequate power supplies to run the computers and upgraded  
20 components that HP advertised, marketed and sold as being compatible and customizable, and  
21 that HP itself installed into the computers. The defects were substantially certain to occur under  
22 normal use, because the normal use of the computers and their included components (particularly  
23 for graphics and multitasking) would require power in excess of what could be supplied by the  
24 power supply unit.

25       83.     The defect in the computers was not apparent at the time of purchase, because HP  
26 failed to disclose (1) the power requirements of the included components, (2) the component  
27 manufacturers' power recommendations, or (3) the fact that the rating of the included power  
28 supply was less than the required or recommended power needs.

84. As a result of Defendant's sale of defective products that do not perform as warranted and are unfit for normal use, Plaintiff, and those similarly situated, have suffered damages.

85. Plaintiff contacted Defendant for assistance, but they would not replace the computer or even agree to repair it. Plaintiff has accordingly provided Defendant with sufficient notice of the breach pursuant to section 2607 of the California Commerical Code.

## **PLAINTIFF'S FIFTH CAUSE OF ACTION**

**(Violation of the Song-Beverly Consumer Warranty Act, Civil Code §§ 1790, Et. Seq)  
On Behalf of Himself and the Class**

86. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

87. This cause of action is brought pursuant to the Song-Beverly Consumer Warranty Act, California Civil Code §§ 1790, et seq (the “Act”).

88. Plaintiff, and those similarly situated, were “buyers” of “consumer goods” as those terms are defined under California Civil Code section 1791. The HP Slimline and Pavilion computers sold to Plaintiff, and those similarly situated, are “consumer goods” as defined in the Act.

89. Defendants were “manufacturers,” “retail sellers,” “sellers” and “retailers,” as those terms are defined in section 1791 of the Act.

90. An implied warranty of merchantability arose out of and was related to Defendants sales of their Slimline and Pavilion computers.

91. Defendants breached the implied warranty of merchantability by selling defective computers—i.e., computers with power supplies that were not sufficient to fully operate the computer and all of its included components. These computers were unfit for their ordinary purpose at the time of sale because, regular use for their ordinary purpose (including use of the graphics functions and multitasking) would require more power than could be supplied, leading to the system failures and hardware failures described above, and creating a substantial risk of fire, a safety hazard.

1           92. Defendants also made “express warranties” (set forth above) as defined by  
2 § 1791.2 of the Act in connection with the sales of consumer goods to Plaintiff and those  
3 similarly situated. By selling computers with insufficient power supplies, Defendants breached  
4 this written warranty in that the computers were not free from defects in materials or  
5 workmanship under normal use.

6           93. As a result of Defendants' sale of defective products that do not perform as  
7 warranted and are unfit for normal use, Plaintiff, and those similarly situated, have suffered  
8 damages.

9           94. Plaintiff contacted Defendants for assistance, but they would not replace the  
10 computer or even agree to repair it. Plaintiff, and those similarly situated, have accordingly been  
11 unable to obtain appropriate relief in the form of replacement, repair or restitution.

12        95. Plaintiff and the Class have suffered and will continue to suffer damages as a  
13 result of Defendants' failure to comply with their warranty obligations. Accordingly, Plaintiff  
14 and the Class are entitled to recover such damages under the Song-Beverly Act, including  
15 damages pursuant to Civ. Code §§ 1791.1(d) and 1974.

16        96. Defendants' breaches of warranty, as set forth above, were willful. Accordingly, a  
17 civil penalty should be imposed upon Defendants in an amount not to exceed twice the amount of  
18 actual damages.

**PLAINTIFF'S SIXTH CAUSE OF ACTION**  
**(Unfair, Unlawful and Deceptive Trade Practices,  
Business and Professions Code § 17200, et seq.)**  
**On Behalf of Himself and the Class**

22        97. Plaintiff realleges and incorporates by reference the paragraphs of this complaint  
as if set forth herein.

24       98. Within four (4) years preceding the filing of this lawsuit, and at all times  
25 mentioned herein, Defendant has engaged, and continue to engage, in unfair, unlawful and  
26 deceptive trade practices in California by engaging in the unfair, deceptive and unlawful business  
27 practices outlined in this complaint. In particular, Defendant has engaged, and continue to  
28 engage, in unfair, unlawful and deceptive trade practices by, without limitation, the following:

- 1               a.     deceptively representing to Plaintiff, and those similarly situated, that its  
 2 computers included sufficient power to function properly;
- 3               b.     failing to inform Plaintiff, and those similarly situated, that the computers,  
 4 incuding the upgraded components, they purchased did (or may) not have adequate power to  
 5 properly function;
- 6               c.     failing to inform Plaintiff, and those similarly situated, that the computers  
 7 they purchased did not meet the power supply recommended by the manufacturers of the  
 8 components and peripherals that were included with the computers;
- 9               d.     engaging in fraud, deceit, and misrepresentation as described herein;
- 10              e.     breaching class members' express warranties;
- 11              f.     violating the Song Beverly Consumer Warranty Act;
- 12              g.     violating the CLRA as described herein; and
- 13              h.     violating the FAL as described herein.

14       99.   Plaintiff and those similarly situated relied to their detriment on Defendant's  
 15 unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been  
 16 adequately informed and not deceived by Defendant, they would have acted differently by,  
 17 without limitation, purchasing different computers and/or components.

18       100.   Defendant's acts and omissions are likely to deceive the general public.

19       101.   Defendant engaged in these unfair practices to increase its profits. Accordingly,  
 20 Defendant has engaged in unlawful trade practices, as defined and prohibited by section 17200, et  
 21 seq. of the California Business and Professions Code.

22       102.   The aforementioned practices, which Defendant has used to its significant  
 23 financial gain, also constitute unlawful competition and provides an unlawful advantage over  
 24 Defendant's competitors as well as injury to the general public.

25       103.   Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as  
 26 necessary and according to proof, to restore any and all monies acquired by Defendant from  
 27 Plaintiff, the general public, or those similarly situated by means of the unfair and/or deceptive  
 28 trade practices complained of herein, plus interest thereon.

104. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit Defendant from continuing to engage in the unfair trade practices complained of herein.

105. The acts complained of herein occurred, at least in part, within four (4) years preceding the filing of this lawsuit.

5       106. Plaintiff and those similarly situated are further entitled to and do seek both a  
6 declaration that the above-described trade practices are unfair, unlawful and/or fraudulent, and  
7 injunctive relief restraining Defendant from engaging in any of such deceptive, unfair and/or  
8 unlawful trade practices in the future. Such misconduct by Defendant, unless and until enjoined  
9 and restrained by order of this Court, will continue to cause injury in fact to the general public  
10 and the loss of money and property in that Defendant will continue to violate the laws of  
11 California, unless specifically ordered to comply with the same. This expectation of future  
12 violations will require current and future customers to repeatedly and continuously seek legal  
13 redress in order to recover monies paid to Defendant to which Defendant is not entitled. Plaintiff,  
14 those similarly situated and/or other consumers nationwide have no other adequate remedy at law  
15 to ensure future compliance with the California Business and Professions Code alleged to have  
16 been violated herein.

17       107. As a direct and proximate result of such actions, Plaintiff and the other members of  
18 the Class have suffered and continue to suffer injury in fact and have lost money and/or property  
19 as a result of such deceptive, unfair and/or unlawful trade practices and unfair competition in an  
20 amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this  
21 Court. Among other things, Plaintiff and the class lost the amount they paid for the computers.

22        108. As a direct and proximate result of such actions, Defendant has enjoyed, and  
23 continues to enjoy, significant financial gain in an amount which will be proven at trial, but which  
24 is in excess of the jurisdictional minimum of this Court.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

A. On Cause of Action Number 1 against Defendant and in favor of Plaintiff and the other members of the Class:

1. For restitution and injunctive relief pursuant to California Civil Code section 1780;
  2. Actual damages, the amount of which is to be determined at trial;
  3. Punitive Damages, the amount of which is to be determined at trial; and
  4. Statutory Damages as provided by Civil Code section 1780(b), the amount of which is to be determined at trial.

B. On Causes of Action Numbers 2 and 6 against Defendant and in favor of Plaintiff and the other members of the Class:

1. For restitution pursuant to, without limitation, the California Business & Professions Code §§ 17200, et seq. and 17500, et seq; and
  2. For injunctive relief pursuant to, without limitation, the California Business & Professions Code §§ 17200, et seq and 17500, et seq;

C. On Cause of Action Number 3 against Defendant and in favor of Plaintiff and the other members of the Class:

1. An award of compensatory damages, the amount of which is to be determined at trial; and
  2. An award of punitive damages, the amount of which is to be determined at trial;

D. On Causes of Action Numbers 4 and 5 against Defendant and in favor of Plaintiff and the other members of the Class:

1. An award of compensatory damages, the amount of which is to be determined at trial;
  2. An award of punitive damages, the amount of which is to be determined at trial; and
  3. An award of statutory damages according to proof

27 On all causes of action against Defendant and in favor of Plaintiff, class members and the general  
28 public:

1. For reasonable attorneys' fees according to proof pursuant to, without limitation, the California Legal Remedies Act and California Code of Civil Procedure § 1021.5;
  2. For costs of suit incurred; and
  3. For such further relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: October 22, 2012

GUTRIDE SAFIER LLP

Adam J. Gutride, Esq.  
Seth A. Safier, Esq.  
Todd Kennedy, Esq.  
Kristen G. Simplicio, Esq.  
835 Douglass Street  
San Francisco, California 94114

Attorneys for Plaintiff